UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/718,885	11/21/2000	Wilfried Baatz	RAMI115985	2343

7590 02/28/2003

CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC
Suite 2800
1420 Fifth Avenue
Seattle, WA 98101

EXAMINER	
NGUYEN, TAM M	
ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/718,885	BAATZ, WILFRIED	
	Examiner	Art Unit	
	Tam Nguyen	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *24 December 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *16-20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6 and 15* is/are rejected.

7)☒ Claim(s) *7-11* is/are objected to.

8)☒ Claim(s) *12-14* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *2,3,&6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-11, drawn to an exercise device, classified in class 482, subclass 57.

III. Claims 12-14, drawn to a chain tensioning device, classified in class 474, subclass 135.

2. Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility as a tensioning device for flexible drive elements of non-exercise equipment. See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group III, restriction for examination purposes as indicated is proper.

5. Applicant is required to elect a single disclosed invention for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic. Since applicant elected Invention I in response to the last election requirement, the Examiner will examine that invention to expedite the prosecution; thus, claims 12-14 will be withdrawn.

6. Applicant is advised that a reply to this requirement must include an identification of the invention that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Specification

7. The disclosure is objected to because of the following informalities:

Page 7, line 31, delete "123" and insert --122--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Hu (5,382,208).

8. Regarding claim 1, Hu discloses an exercise training apparatus comprising a support frame (20), a bicycle frame, a flywheel (32) rotatably coupled to a rear mounting assembly of the support frame, a transmission system as substantially claimed, and a magnetic field generating source (42) (see Fig. 1).

9. Regarding claim 5, Hu discloses an exercise device as described above (see discussion of claim 1). Hu further discloses the resistance as substantially claimed (see col. 2, lines 30-33).

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Lo (4,852,872).

10. Regarding claim 6, Lo discloses an exercise training apparatus comprising a support frame (11) for supporting a bicycle frame (10), a transmission including a flexible drive element (35), a resistance generating unit, and a chain tensioning device (see Figs. 1 and 2 & Col. 1, line 51-54).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 3 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hu (5,382,208) in view of Baatz (5,656,001).

11. Regarding claim 2, Hu discloses an exercise device as described above (see discussion of claim 1). Hu does not disclose that a portion of the flywheel is a non-magnetic, electrically

conductive ring. Baatz discloses a similar exercise device that includes a flywheel comprising a non-magnetic, electrically conductive disk (see ABSTRACT). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Hu's resistance device with Baatz's resistance device since they are functionally equivalent in the exercise art.

12. Regarding claims 3 and 15, Hu and Baatz disclose a modified exercise device as described above (see discussion of claims 1 and 2). Baatz does not disclose that the flywheel includes a plurality of radial segments that form the disk/ring. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make the disk/ring out of a single or multiple components. One-piece construction, in place of separate elements fastened together, is a design consideration within the skill of the art. In re Kohno, 391 F.2d 959, 157 USPQ 275 (CCPA 1968); In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hu (5,382,208) in view of Harnden et al (5,480,366).

13. Regarding claim 4, Hu discloses an exercise device as described above (see discussion of claim 1). Hu does not disclose that the flywheel extends between the rear forks of the bicycle frame. Harnden et al. disclose a similar exercise device that includes a resistance device (42) having a flywheel that extends between the rear forks (see Col. 6, lines 52-63). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Hu's resistance device with Harden's resistance device since they are functionally equivalent in the exercise art.

Allowable Subject Matter

14. Claims 7 - 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hoffenberg (4,955,600)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 703-305-0784. The examiner can normally be reached on M-F 9-5.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

***

February 24, 2003

NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700